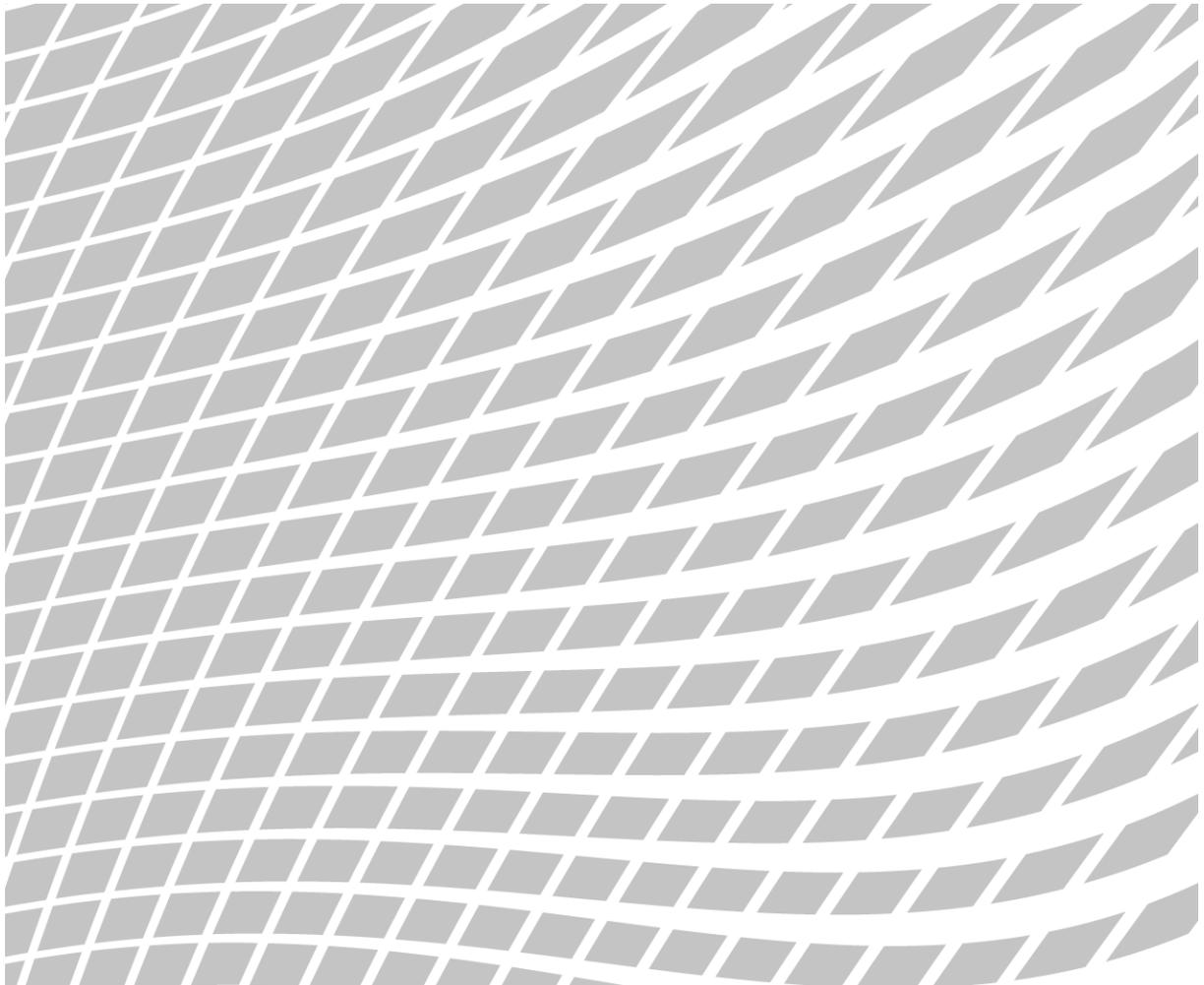


16 January 2012

Draft Banking Insolvency Ordinance FINMA

Key points



Background

1. Since 1 July 2004 FINMA has been solely responsible for orders relating to bank insolvency proceedings. On 1 September 2011 the amendments to the Swiss Banking Act in connection with the draft version of the deposit protection scheme entered into force, while those proposed in the "too-big-to-fail" draft version are expected to be incorporated into the Banking Act and become effective in the course of 2012. The latter will also affect bank insolvency provisions.
2. The draft ordinance on the insolvency of banks and securities dealers (Bank Insolvency Ordinance-FINMA; BIO-FINMA) shall make it possible to conduct insolvency proceedings legally and which are, from the point of view of procedural economy, tailored to the specific characteristics of banks and securities dealers ("institutions").

Objectives

3. **Quick:** Insolvency proceedings are to be accelerated by shortening certain deadlines and, where permissible, by eliminating procedural steps and individual legal remedies.
4. **Efficient:** Insolvency proceedings are to become more efficient by granting the person responsible (FINMA, the liquidator or the restructuring agent) more flexible and tailored instruments.
5. **Appropriate:** Insolvency proceedings are to allow for any peculiarities pertaining to an individual case.
6. **Legally secure:** Insolvency proceedings must be as transparent and predictable as possible.
7. **Easy to apply:** Combining restructuring and bankruptcy proceedings in one ordinance makes it easier to apply the provisions.

Innovations in the sections on bank bankruptcy

8. The precept of treating creditors equally is upheld in due consideration of the protection of the function and the system as well as any pre-existing differences in treatment. Swiss and foreign creditors are treated equally.
9. To accelerate proceedings, FINMA may inform the persons concerned by public announcement instead of writing to them personally.
10. Claims which do not reveal the beneficiaries' names, particularly pseudonym and numbered accounts, do not count as deposits and are therefore not classed as preferential.

Important aspects of the restructuring law and restructuring proceedings

11. The restructuring plan can be drawn up by FINMA and be approved immediately, i.e. along with approving the commencement of proceedings.
12. Although not mandatory, a restructuring agent may be appointed. He has sovereign power, but does not have any authority to issue orders in the meaning of the Administrative Procedures Act (APA).

13. The basic features of the restructuring plan are to be publicly announced and to provide information about all the important facts relating to the restructuring. If banking services are to be continued, in-depth information must be provided.
14. The unsecured creditors holding the majority of capital may reject the restructuring plan within a period of ten days (accelerates proceedings and provides legal certainty).
15. Debt-to-equity swaps and statutory bail-ins may only be triggered if they prove indispensable for the restructuring plan. Before such a conversion, contractually created convertible capital must be converted and the share capital be fully reduced. All convertible claims are explicitly declared as such in the BIO-FINMA.
16. If banking services are continued, the assets and rights which are linked from an economic perspective are to be transferred together. Once the approved restructuring plan has been enforced, all the assets and contractual relationships, including all the related rights and obligations, are transferred to the recipient (another legal entity or a bridge bank).
17. FINMA's approval of the restructuring plan is an executory agreement and, at the same time, an act of disposition. Entry in the land register or the commercial register is of purely declaratory value.
18. The protection of financial market infrastructures (payment and securities settlement systems) is strengthened by more specific implementing provisions.
19. In certain situations (transfer of banking services), FINMA may temporarily suspend existing contractual termination rights of the bank's counterparties.